IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.671 OF 2005

IN

COMPANY PETITION NO.419 OF 1987

Sayajee Iron & Engineering
Pvt.Ltd. ...Petitioner

Versus

Kamdar Cements Ltd. ...Respondent

And

Kotak Mahindra Bank Ltd. ...Intervener

ALONG WITH

COMPANY APPLICATION NO.672 OF 2005

IN

COMPANY PETITION NO.478 OF 1988

Crompton Greaves Ltd. ...Petitioner

Versus

Kamdar Cements Ltd. ...Respondent

And

Kotak Mahindra Bank Ltd. ...Intervener

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Mr.Birendra Saraf with Mr.Sayed & Mr.Devyash Chaurasia i/b M.K.Ambalal & Co. for Applicant/Intervener.

Mr.Ashish Kamat i/b V.Deshpande & Co. for Petitioners.
Mr.Saurabh Nathany i/b M/s.Gagrat & Co. for
secured creditors i.e. Central Bank of India.
Mr.S.C.Gupta, Official Liquidator with
Ms.K.V.Gautam, Dy.Official Liquidator is present.
Mr.A.C.Ghone, Asstt.Court Receiver is present.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 27, 2006.

P.C.

1. This Application is filed by Kotak Mahindra Bank Ltd., third party for recall of direction given under order dated July 7, 2005 to the Official Liquidator to take over possession of the properties of the Respondent Company from the Court Receiver, High Court, Mumbai. That direction was given in view of the stand taken by the Counsel for the Central Bank of India before this Court at the time of hearing. Today, Counsel for the Central Bank of India clearly accepts that there are other creditors (financial institutions) who have resorted to proceedings against the Respondent Company in which proceedings, Court Receiver has

been appointed. One such proceeding is taken out by Kotak Mahindra Bank Ltd. being original Suit No.1316 of 1992 filed in this Court which now stands transferred to the Debts Recovery Tribunal. In the said Suit, Court Receiver has been appointed who has taken over possession of the assets and properties of the Respondent Company. The matter now stands transferred to Debts Recovery Tribunal, but the order of Court Receiver still operates. If it is so, it is clear that Court Receiver has been appointed in some other proceedings besides the proceedings resorted to by the Central Bank of India. The said proceedings are taken out by Kotak Mahindra Bank Ltd.-third party in their own rights. They have taken over the claim which originally pertain to ICICI Bank and are entitled to pursue the proceedings in their own rights. If it is so, the Official Liquidator cannot straightaway proceed to take over possession of the assets and properties which are presently in custody of Court Receiver appointed by the Court in proceedings taken out by Kotak Mahindra Bank Ltd., unless secured creditors consent for that situation as they have chosen to stay out of winding up

proceedings.

2. Accordingly, the observations made in Paragraphs 7, 8, 9 and 10 will have to be modified to the limited extent. In other words, the order dated 7th July 2005 is limited to making Company Petition No.478 of 1998 absolute in terms of prayer clause (a), except the portion "with direction to the Official Liquidator who has been appointed as provisional Liquidator to forthwith take over possession of the assets and properties of the Company and proceed in accordance with law" insofar as the properties claimed by the Applicant Kotak Mahindra Bank Ltd. are concerned.

A.M.KHANWILKAR, J.